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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ TEST.CAS. 5/2013

DR PAWAN LAL & ANOTHER Petitioners
Through Mr. Anil Gera with Mr. Rakesh
Chaudhry, Advocates

versus

STATE & ORS Respondents
Through Mr. Pankaj Garg, Advocate for
R-3 to 5.

% Date of Decision: 13th April, 2018.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

I.A. 4937/2018

Present application has been filed under Order XXII Rule 4 read with Section 151 of the Code of Civil Procedure consequent upon the demise of Respondent no. 2, Pandit Dwarka Nath Shastri.

Keeping in view the averments in the application and the fact that all the legal representatives of respondent no. 2 are already on record, the present application is allowed and the amended memo of parties is taken on record.

I.A. 4983/2018

Present application has been filed under Order XXXII Rule 3 read with Section 151 of the Code of Civil Procedure for appointment of

guardian of respondent no. 8, Sonia Sharma Shastri D/o Late Amit Sharma.

It is stated that due to inadvertence the petitioners did not move an application for appointment of next friend/ guardian of respondent no. 8 along with the petition though they had categorically mentioned in the memo of parties that the minor respondent no.8 be represented through her mother i.e. respondent no. 7.

Keeping in view the averments in the application and the fact that respondent no. 7 had filed objections on behalf of herself and the minor respondent no. 8, respondent no.7 is appointed as the next friend and guardian of respondent no. 8.

Accordingly, the application stands disposed of.

TEST.CAS. 5/2013

1. Present petition has been filed by the petitioners under Section 272 read with Section 278 of the Indian Succession Act for grant of letters of administration in respect of Will dated 02nd December, 2009 executed by late Smt. Shakuntala Devi W/o Pandit Dwarka Nath Sharma.
2. It has been averred in the petition that the petitioner no. 1 is the nephew of the testator Smt. Shakuntala Devi and petitioner no. 2 is Pt. Chandra Haas Gurumandir Trust, of which petitioner no. 1 is the secretary. It is stated that the testator expired on 24th February, 2011. The testator is stated to have executed a Will dated 02nd December, 2009, which was duly attested by Shri Ramji Goswami and Smt. Priyata Lal. The Will dated 02nd December, 2009, has been translated by the official translator of this Court and is reproduced hereinunder:-

“WILL

I, Shakuntla Devi D/o Pt. Chandrahas Ji W/o Shri Dwarika Nath Shastri Ji, Age 80 years reside at 9/7375, Anand Mohalla, Gandhi Nagar.

I am writing the details of my properties and am making the WILL in this regard so that no kind of dispute may arise after my death. I am an eighty years old woman and there is no certainty of my life as when it might come to its end. Therefore, I am writing this WILL in my own hand. I had made a WILL on 7th January, 2008 wherein so many things have been left due to which I am nullifying those WILLS and I am also annulling all those WILLS which I had made prior to those WILLS. I have five children.

- 1. Satish Kumari (Daughter)*
- 2. Reeta Sharma (Daughter)*
- 3. Renu Sharma (Daughter)*
- 4. Indu Sharma (Daughter)*
- 5. Late Amit Kumar Sharma*

All my four daughters are married and I have fulfilled all my duties towards them. My son (Amit Kumar Sharma) was also married who is no longer in this world. He had also a daughter. My daughter-in-law decided to enter into a second marriage after the demise of my son and she went away with her daughter leaving us. She did not return back again. My house 9/7375 is in front of Pt. Chandra has Guru Mandir in Pt. Chandrahas Street, Anand Mohalla, Gandhi Nagar. This house comprises of two rooms, one shop and one small room. Two rooms are on the roof. I have let on rent a few rooms of this property whose rent I collect. I am transferring this property in favour of Pt. Chandrahas Trust out of my own volition. This property may be transferred to Pt. Chandrahas Guru Mandir Trust after my death and the rent of this property may be collected by Pt. Chandrahas Trust after my death.

(2) 22/17 old No. 9/223, Main Road, Gandhi Nagar, Delhi-31 is my ancestral house. My father Pt. Chandrahas Ji had purchased this land in the year 1953 and had built a house on it for him and

his family. I have also a share in this property alongwith my brothers late Jagdish Lal, late Dr. Raghunand Lal and my youngest brother Meet Raj. I have left my share in favour of my nephew Dr. Pawan Lal. My nephew Dr. Pawan Lal has extended all kinds of help to me and this is why I have left (my share) in the name of my nephew Dr. Pawan Lal through a deed which I had got registered on 1st July, 2009. Nevertheless, so that no kind of dispute may arise, I wish that whatever share I might have in this property the ownership rights thereof may be of my nephew Dr. Pawan Lal S/o Dr. Raghunandan Lal.

(3) Apart from the properties described above, whatever property of my father Pt. Chandrahas Ji might have been left wherein I might have any share and entitlement, I transfer the ownership rights of that property also in the name of my nephew Dr. Pawan Lal S/o Dr. Raghunandan Lal. The ownership rights of my share shall be of my nephew Dr. Pawan Lal after my death and none would have to interfere or object to the same.

(4) I have saving accounts in Punjab National Bank, Gandhi Nagar, Indus Bank, Preet Vihar and Oriental Bank, Gandhi Nagar, Mahila Colony. All the savings of my entire life are deposited in these accounts. I wish that langar and other daan punya (charity) work may be done out of this money and the responsibility thereof I entrust with my nephew Dr. Pawan Lal.

This is my wish that after my death action may be taken regarding my properties in accordance with my WILL. I am writing this in my full senses without any pressure and coercion. I have written this WILL on 02.12.2009.

Sd/ - Shakuntla Devi
(In Hindi)

Thumb Impression of Shakuntla Devi

Thumb Impression of Ramji Goswami

1. (Ram Ji Goswami S/o Sh. S.D. Goswami)

C-63, Preet Vihar, Delhi-92.

V.ID. DCV0891853

Thumb Impression of Preyata Lal W/o Sh. Pawan Lal

2. Mrs. Preyata Lal W/o Sh. Pawan Lal

C-63, Preet Vihar, Delhi-92

V.ID. DCV1758383”

3. It is stated that the deceased left behind five legal heirs, i.e. her husband (respondent no. 2), four daughters (respondent nos. 3 to 6), the wife of a pre-deceased son (respondent no. 7) and minor daughter of a pre-deceased son (respondent no. 8).
4. Notice was issued on the present petition on 15th January, 2013. Citations were also directed to be issued, which came to be published in the English edition of the daily newspaper “The Statesman” and Hindi edition of daily newspaper “Dainik Jagran”.
5. Respondent nos.3 to 5 filed their ‘No Objections’ supported by affidavits. Despite service, no objection was filed by respondent no. 2 during his lifetime.
6. Since respondent no. 6 could not be served through ordinary process, on 22nd January, 2015, publication was carried out in the English edition of the daily newspaper “The Statesman” and Hindi edition of daily newspaper “Rashtriya Sahara”. However, despite service, no objection has been filed by respondent no. 6. Valuation report has been filed by the state.
7. The Respondent nos. 7 and 8 filed objections. The main objections are: (a) the will is forged and fabricated and has been prepared by the petitioners in collusion with respondent nos. 1 to 6; (b) respondent nos. 7 and 8 have preferred Civil Suit No. 141 of 2011 titled “*Smt. Chandra Sharma & Anr. V/s Sh. Dwarka Nath Shastri & Others*” for declaration, permanent and mandatory injunction against respondent nos. 2 to 5; (c) the testator being a lady aged 80 years could not have executed a holographic Will.
8. Vide order dated 22nd February, 2016, the following issue was framed in the present petition:-

(1) Whether the Will dated December 2, 2009 is the last and the final Will of Smt. Shakuntla Devi, if the answer is in affirmative, whether the petitioners are entitled to the relief as prayer for in the present petition?

OPP

9. Dr. Pawan Lal, nephew of the deceased filed an affidavit by way of evidence and the said affidavit has been marked as Ex.PW2/X. It has been stated by the petitioner no. 1 in his affidavit that the Testator had full control over her mental faculties and had executed the Will of her own free volition without any threat, pressure or coercion. He further stated that the Will dated 02nd December, 2009 was handwritten by the Testator in the presence of two witnesses and the Testator expired on 24th February, 2011 at New Delhi leaving behind her last Will and testament dated 02nd December, 2009. The petitioner has proved the Death Certificate of the Testator as Ex.PW2/1.

10. Wife of petitioner no. 1, one of the attesting witnesses has adduced evidence by way of an affidavit dated 13th July, 2016, which is marked as Ex.PW-1/X. The wife of the petitioner no. 1 has deposed as under:-

- 1. That I knew Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri D/o Late Pandit Chander Hass, who breathed his last on 24th February 2011 at Delhi Heart Hospital, Jagriti Enclave, Main Vikas Marg, Delhi.*
- 2. That Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri was residing at 9/7375, Anand Mohalla, Gandhi Nagar, Delhi. That Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri was my husband's maternal aunt. That Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri had full control over her mental faculties & had requested me & Sh. Ramji Goswami to be the attesting witnesses on her Will, which she had hand-written in our presence at her residence on 2nd December 2009.*
- 3. That on 2nd December 2009 in my presence as also in the presence of Sh. Ramji Goswami, Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri wrote in her own handwriting as also*

executed a Will at her residence i.e. 9/7375, Anand Mohalla, Gandhi Nagar, Delhi. That Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri signed the said Will in my presence as also in presence of Sh. Ramji Goswami, the other attesting witnesses. That Sh. Ramji Goswami affixed his signatures on the said Will as a witness. That I too affixed my signatures as a witness on the said Will in presence of Smt. Shakuntala Devi & Sh. Ramji Goswami. That thereafter we accompanied Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri to the Sub Registrar's office at Gandhi Nagar, Delhi & the same was got registered, all of us signed as also put our thumb impressions on the said document as also in the register as also acknowledged our signing & putting our thumb impressions before the Sub Registrar. The said Will was registered as Document No. 5180 in Additional Book No.3 in Volume No. 948 on Pages 18 to 20. The said Will dated 2nd December 2009 of Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri is exhibited EXHIBIT-PW-1/1. I identify the signatures of Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri, on the Will dated 2nd December 2009, which she affixed in my presence, the same are at Point A. I identify my signatures on the said Will, which I affixed in presence of Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri & Sh. Ramji Goswami, the same are at Point B. I also identify the signatures of Sh. Ramji Goswami, the other attesting witness on the said Will, which he affixed in my presence as also in presence of the testator, the same are at Point C.

4. That I have also verified the Petition as has been preferred for grant of Letter of Administration in the estate of Smt. Shakuntala Devi W/o Sh. Dwarka Nath Shastri as one of the attesting witnesses to his Will dated 2nd December 2009.

11. Both the said witnesses were cross examined by the counsel for respondent nos. 7 and 8.

12. Though the respondent nos. 7 and 8 filed their affidavit in support of objections, yet the respondent no. 7 did not appear for cross examination. Cost was imposed vide order dated 11th August, 2017. Since respondent no.

7 did not deposit the cost, her affidavit was taken off the record and the respondents' evidence was closed vide order dated 30th October, 2017. Thereafter none has appeared for respondent nos. 7 and 8 before this Court.

13. Civil Suit No. 141 of 2011 titled "*Smt. Chandra Sharma & Anr. V/s Sh. Dwarka Nath Shastri & Others*" filed by respondent no. 7 and 8 for declaration, permanent and mandatory injunction against respondent nos. 2 to 5 was dismissed vide order dated 18th August, 2017.

14. In the opinion of this Court, the testimonies of the both the petitioners' witnesses regarding the execution of the Will dated 02nd December, 2009, its attestation and the mental capability of the testator to executed the aforesaid Will inspire confidence.

15. This Court is further of the opinion that the Will dated 02nd December, 2009, marked as Ex.PW1/1 complies with the requirements of Section 63 of the Indian Succession Act, 1925. It has been duly signed by the testator and her signatures are so placed that it is clear that it was intended thereby to give effect to the writing of the Will. The Will dated 02nd December, 2009 is registered and has also been attested by two witnesses. As per evidence of PW2 dated 13th July, 2016, she had seen the testator writing and signing the Will and each of the witnesses had signed the Will in the presence of the testator. There is no evidence whatsoever that the Testator did not have the capacity or that she made her Will under any duress or coercion.

16. In view of the above, this Court is satisfied that the petitioners have succeeded in proving that the testator Smt. Shakuntala Devi had executed the Will dated 02nd December, 2009 in good health and the said Will was her last Will and testament.

17. Consequently, the present petition is allowed. The letters of administration in respect of the Will dated 02nd December, 2009 annexed thereto is granted in favour of the petitioners, subject to their furnishing the requisite Court fee in terms of the valuation report and submitting an administrative bond with one surety in accordance with law.

APRIL 13, 2018

mn/rn

MANMOHAN, J